

Pro Se Litigation
Interim Feasibility Committee
Report

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Report to the Supreme Court of Missouri
and The Missouri Bar

**Supreme Court of Missouri and Missouri Bar
Joint Pro Se Litigation
Interim Feasibility Committee**

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Introduction

Background

In October 2002, the Supreme Court of Missouri and The Missouri Bar established a Joint Commission to Review Pro Se Litigation. The commission was asked to assess (1) the extent of pro se litigation in Missouri family courts; (2) the current difficulties encountered by pro se representation both by the litigants and the courts; and (3) the measures that other states have adopted in response to the trend in self-representation. In addition, the Joint Commission was asked to identify and recommend statewide conceptual models for addressing pro se litigation in Missouri's family law cases.

In September 2003, the Joint Commission presented its detailed report to the Supreme Court of Missouri and in October 2003, the Commission reported its findings and recommendations to The Missouri Bar Board of Governors.

Among the findings, the Joint Commission concluded that pro se litigants raise significant challenges for the courts and court staff. For court staff, the pro se litigants consistently pose more questions and require more attention than others seeking information or help; the additional demands of the self-represented litigant requires court clerk's to divert their attention from their other job duties.

Since many of the answers to the questions from self-represented litigants would be considered legal advice, court clerks are limited in the information they can provide, giving the pro se litigant the mistaken impression that the clerk is not willing to help. In addition, due to the lack of uniform training, many clerk's face the dilemma of laboring over whether their answer will or will not be considered legal advice.

Pro se litigants were also found to pose major challenges for judges. Ethical issues are raised when the pro se litigant expects a judge to help him/her during a hearing or other proceeding, not realizing that by offering such help, the judge may be compromising his/her role as an impartial party in the proceeding. The pro se litigant's lack of knowledge regarding procedural and evidentiary rules presents additional challenges for judges. Since pro se litigants are more likely to file insufficient pleadings, judges are often put in the position of deciphering the actual relief sought, before evaluating whether a legally cognizable claim exists. Failures in arranging for service can often require numerous scheduling adjustments. The additional time expended results in the very inefficient use of court resources.

The Commission also concluded that despite the challenges presented by the pro se litigant, the court system must respect the self-represented litigant's right of access, and Commission recommendations must provide for a meaningful response to the barriers

that self-represented litigants face. The most glaring barrier for most pro se litigants is the inability to find affordable legal services.

Consequently, the recommendations are not only intended to assist access for the pro se litigant, but they are also intended to reduce the inefficiencies and pressure that the existing unrepresented and uninformed pro se litigant places on the already thinly stretched court system and court staff resources.

In addition to the eight recommendations specifically responding to the challenges of pro se litigation in Missouri, the Joint Commission's final report recommended that the Supreme Court of Missouri establish a Pro Se Implementation Committee responsible for planning and carrying out the execution of the approved recommendations of the Joint Commission.

When the report was presented to The Missouri Bar, the Board of Governors inquired whether the recommendations in the report were delineated to the point that they could be approved for implementation, and the Board requested that an interim feasibility review take place which would (1) clarify whether the implementation of each specific recommendation would be the responsibility of the court, the bar or both; (2) identify the actions and resources needed for each recommendation; (3) and identify the estimated cost.

In December of 2003, a Joint Feasibility Committee was established to perform this review. The committee met on three occasions: January, March and May. Chairperson Lori Levine created seven subcommittees. One subcommittee was assigned to review the first and fifth recommendation; a separate subcommittee was assigned to review each of the six remaining substantive recommendations.

Pro Se Feasibility Committee Review

As the subcommittees performed their reviews, each encountered inherent limitations related to their analysis and results. Each subcommittee would be able to easily conclude whether a recommendation falls under the responsibility of the court, the bar or both; however, the analysis of the actions and resources needed to implement a recommendation would prove much more elusive.

Because each recommendation presented a myriad of possible options and levels of implementation, a comprehensive analysis of all options and levels would venture into areas anticipated for an implementation committee, rather than the limited interim scope suggested for this committee. It is also clear that the recommendations are interrelated and cannot be assessed accurately in isolation from each other.

Moreover, any such analysis and any conclusions at this interim phase would be limited because this committee does not have the benefit of knowing which of the many options available for each recommendation would be approved and supported by the responsible authority. Further limitations exist because this committee is not comprised of members

who have expertise in all of the technical and professional areas anticipated for an implementation committee to develop a comprehensive analysis and plan for bringing each recommendation to fruition.

Consequently, this feasibility committee worked within the more limited scope with the intention of providing a solid foundation for the future implementation committee. Overall, this committee found that the educational, creative, technical, and legal expertise exists within the court and the bar to feasibly develop and implement each recommendation.

For example, OSCA currently has staff with the expertise to plan and implement judicial and court clerk educational programs; develop and print informational brochures for pro se litigants; produce and distribute videos, Internet-based, and CD-ROM training materials; assist in the development of pro se litigant forms; and develop and deliver live training. OSCA has the technical expertise to develop, launch and maintain a Web site with information to help pro se litigants. However, as a practical consideration, it may not be feasible to immediately implement every option within a recommendation, either in terms of staff or funding appropriations.

Similarly, the Court can order mandatory pro se training for court clerks and judges; mandatory education for pro se litigants; encourage circuits to create databases of lawyers who will provide legal services at lower rates; or order that the development of pro se forms be developed outside the existing Supreme Court of Missouri forms committee process.

The Missouri Bar could use resources to expand lawyer referral options by creating lawyer recruitment initiatives which will promote involvement in referral service and pro bono programs.

However, for a committee to realistically develop a detailed plan and budget to initiate the recommendations, the feasibility committee concluded that the Supreme Court of Missouri, and to a lesser extent, The Missouri Bar and Missouri's local and specialty bars, would need to provide guidance as to which of the recommendations would be considered priorities and supported with the necessary policy directives, administrative directives and resource/funding allocations. The scope and direction of these various initiatives will depend on policy priorities and funding commitments.

With these general conclusions and recommendations regarding feasibility in mind, each of the recommendations contained in the Pro Se Commission's report are discussed below in terms of (1) the authority responsible to implement the recommendation; (2) some of the general actions and resources which will come into play as an implementation committee considers the options related to each recommendation; and (3) identifying whether cost will be a minor or major factor in the consideration, along with potential funding sources.

Discussion of Individual Recommendations

Recommendation # 1

Pro se litigants in specific types of cases should be required to participate in an education program that describes the risks and responsibilities of proceeding without representation.

Implementation Responsibility - Court, Bar or Both?

The primary responsibility to implement this recommendation is with the courts. However, the bar (attorneys) should be involved as an implementation resource.

Actions and Resources Needed to Implement Recommendation

The initial report of the Joint Commission to Review Pro Se Litigation specifically outlined three areas in which to address the educational needs of pro se litigants and to achieve the goal of meaningful access to justice for the self-represented. The areas included education on the (1) risks and responsibilities; (2) legal information; and (3) legal resources.

The Pro Se Feasibility Committee concluded that action should be taken to develop a model curriculum as a conceptual framework to implement statewide pro se education that will adequately provide information needed to raise the awareness of pro se litigants about the complexity of prosecuting or defending a lawsuit without counsel. The model curriculum should also be practical for courts to implement and maintain (see Appendix A.).

Action should be taken to address a number of operational considerations as part of a mandatory educational model (see Appendix A.):

1. The Pro Se Committee would require self-represented litigants to satisfactorily complete training before a hearing is set.
2. Every party, including defendants and respondents, seeking relief from the court should be required to attend training if he or she intends to proceed without legal counsel.
3. A method to show proof of compliance should be incorporated into the training requirement.
4. Criteria should be established outlining the circumstances under which a self-represented litigant would have to repeat the training in subsequent lawsuits.
5. Exceptions to the training requirement should be created to permit the court to waive requirements in special circumstances including emergency proceedings and other situations where the court deems it necessary.
6. Training, whenever possible, should be customized to describe local court practices.

7. A mechanism for training and recruiting volunteer attorneys should be created and institutionalized to provide live classroom training.
8. The training content to be used in each court location will be determined in accordance with statewide policy and the preferences of the judges of the court. Lawyers who provide this service should not be precluded from representing people attending the class.

Action must be taken by the Supreme Court of Missouri to make the educational requirement mandatory, as well as establish and insure that basic and critical instructional content is provided uniformly, without regard to class locale.

Action should be taken to test the training alternatives using pilot projects established in circuits designated by the Supreme Court of Missouri. Expansion of the programs should proceed based on results of pilot projects.

Anticipated Cost Involved in Implementation

Cost of production will vary depending on delivery method. Live presentations would present the lowest cost alternative, if volunteer attorneys are used. Video training would be costly to produce initially, but less expensive to reproduce. Web-based training also has up front costs and requires ongoing site maintenance. These projects may require a production team to create a script for video or course materials for a live presentation format. If content is customized to fit local court practices, production teams may be required in each circuit (see Appendix A.).

Implementation of these types of educational programs will require funding either from current or future court budget appropriations or through grants from outside organizations.

Recommendation # 2

Guidelines should be developed for court staff that clearly define what information is and is not considered legal advice. The guidelines should be made available to each circuit court with the option of also distributing the guidelines to pro se litigants. A curriculum and training program for court staff and advocates who interact or assist pro se litigants should be developed.

Implementation Responsibility - Court, Bar or Both?

Development and implementation of a curriculum and training program for the judiciary court staff would primarily be the responsibility of the courts.

Actions and Resources Needed to Implement Recommendation

Court clerks play a significant role in making the courts accessible to the pro se litigant. Self-represented litigants want responsive and well-trained court staff to answer procedural questions on such things as court filing and scheduling requirements, to provide information on how the system works, to provide information on where to find

proper forms, to explain and disseminate the information, and to refer them to other services, if available. Court employees are expected to provide courteous, helpful, and meaningful service to the public without giving legal advice.

A survey of court clerks by the Pro Se Commission found that these demands, combined with confusion about what is and what is not legal advice, can often be overwhelming for court clerks.

The Pro Se Committee concluded that a team of OSCA Educational Specialists and court clerks should be appointed to take a number of actions necessary to implement this recommendation.

First, they should develop a set of written guidelines that can be used as a reference and training tool by clerks to help those on the front lines provide information to self-represented litigants, without providing legal advice.

A number of states have already faced this issue and developed guidelines for court clerks. The work accomplished in other states can be used as a resource to develop specific guidelines for clerks in every circuit in the state of Missouri (see Appendix B.).

As part of the implementation process, there should be exploration as to whether it would be useful for the printed guidelines to be available for dissemination to the pro se litigant and whether it would be helpful for the guidelines to be prominently displayed in the court clerks office to provide additional methods for communicating and reinforcing the limitations that clerks must work under.

Currently, there is little existing standardized or formal training for court clerks regarding the pro se litigant. In addition to the development of written guidelines, a detailed curriculum with standardized training modules based on staff training, education and professional development to help prepare staff to assist the unrepresented litigant should be developed. Court staff supervisors should be required to ensure that training is provided to all court clerk personnel who come in contact with the public.

Members of the Court Clerk Education Committee, or other clerks that have previously served as faculty for other core courses, in conjunction with staff members from the education department at OSCA could be a resource for building a comprehensive course regarding assisting the unrepresented litigant.

Guidelines for assisting the pro se litigant could be taught using current and new resources. Classes could be taught to court staff in a live classroom setting during the court clerk colleges which are held every spring and fall. Training regarding legal advice versus providing assistance could also be held during the New Clerk Orientation Class which is held twice a year for employees who have worked in the court system for less than one year. Due to tight budgets, high turnover, and management discretion, only a small portion of the court clerks actually attend these educational session; therefore,

Web-based training and video teleconferencing should also be considered as an alternative or supplemental delivery method.

Anticipated Cost Involved in Implementation

As with some of the other recommendations, development of the guidelines and a detailed curriculum could be accomplished at minimal cost by using a committee made up of OSCA staff and appointed court clerks. In order to take advantage of OSCA educational staff expertise, the development and implementation of the curriculum would likely require designation as a priority by the court, with the assignment of personnel. For appointed court clerks, the cost would involve expenses related to meetings (travel, lodging, food, etc.) and would depend on the size of the committee and number of meetings needed.

Development of other Web-based training and/or video conferencing would require a funding source either through current budgetary appropriations or possibly grant funding.

Development of written guidelines for court clerks, guidelines for distribution to pro se litigants and/or signage displaying guidelines to the self-represented litigants would also require funding sources. Depending on the style and format used to convey the written guidelines to clerks and litigants, this cost could range from minimal (guidelines copied within each office) to significant (development of printed brochure). See estimated budget Appendix C.).

Recommendation # 3

The Judicial Education Committee should develop a curriculum and training program for the judiciary on effective court management techniques in cases involving pro se litigants. The curriculum should include education concerning ethical dilemmas created by pro se litigation and should consider the development of standard protocol for handling hearings involving pro se litigants.

Implementation Responsibility - Court, Bar or Both?

Development and implementation of a curriculum and training program for the judiciary would primarily be the responsibility of the courts.

Actions and Resources Needed to Implement Recommendation

The Pro Se Commission concluded that pro se litigants affect the judiciary at two levels: (1) court management (moving the pro se litigant through the process) and (2) issues related to adjudicating the case. Actions to develop a curriculum and training should focus on both areas.

Action should be taken to develop a curriculum to educate and train judges on methods for more efficiently moving the pro se litigant through the case process. This would include providing information on practices and systems currently in use in Missouri and other states. If the Pro Se Commission's first recommendation requiring all pro se litigants to complete a course on the rights and responsibilities associated with the pro se

representation is implemented, the curriculum would also describe the content of this course.

Action should be taken to develop a curriculum of training to address the conflicting perspectives and open a dialogue within the judiciary regarding the pro se litigant. This would include addressing issues such as judicial resistance toward the pro se litigant; conflicting viewpoints on the issue of access to the courts; the ethical dilemmas that pro se litigants create for judges; the acceptable roles of judges in pro se cases; and the roles and the challenges for judges when one or both parties are self-represented.

The Pro Se Feasibility Committee also concludes that training should be developed to educate judges about any other approved and implemented recommendations from the Pro Se Commission report, which have an effect on either the curriculum and training related to judicial case management processes or are related to the adjudication of a case involving a pro se litigant. This would include the Pro Se Commission recommendations 1, 4, 5, 6, 7 and 8.

Anticipated Cost Involved in Implementation

These actions would require the resources of the OSCA education staff and members of the judiciary to develop the curriculum and training. They would also require vehicles for delivering the training to judges across the state. Adding pro se training to the programs of the Judicial College would be an especially efficient delivery vehicle, since little cost is involved in adding programming to the already established college, which currently enjoys attendance by an estimated 98% of judges.

Other resources could be effective in expanding the options for delivery of training to judges, including Internet training, video conferencing, or via CD-ROM. These methods would require funding sources either from the existing judiciary budget or through outside funding sources such as grants. See estimated budget (Appendix C.).

Recommendation #4:

An internet based centralized clearinghouse should be developed and maintained to serve as a repository for information concerning all pro se services and programs available statewide.

Implementation Responsibility - Court, Bar or Both?

The responsibility to implement and host this site would be with the court. Determining the technical feasibility for an online, Web-based self-help information center should be the primary responsibility of the court and Office of State Courts Administrator. Because this site is intended to serve as a statewide clearinghouse of information including court forms and instructions, using electronic links to counties and circuits where local help is available, and a graphic (map) interface to court listings necessary to navigate the site, this initiative requires direction by OSCA because of its unique access to circuit court officials and local court information. In addition, bar associations could play a key role in identifying resources statewide that should be linked on the Web site.

Actions and Resources Needed to Implement Recommendation:

Fundamental technical requirements for this project are a Web server, Web software, search engine, document serving, forms application software, forms serving, static text, variable text, local court links, centralized content management, centralized content creation and editing, Web site and content maintenance, and a Web site design (graphic and functional).

Several existing Web sites in other jurisdictions can serve as potential models to help developers of a Missouri self-help site to visualize alternatives. Good examples are Web sites provided by Clark County, Nevada and the Florida courts. These limit their content to family court subjects. The Clark County site is more visually friendly, and less technically intimidating than the Florida site. The Florida site presents considerably more information (because it covers the state rather than a single county), and its appearance is more technical. A more knowledgeable user would be able to navigate the Florida site easier than someone with limited technical skills. Both have fairly straightforward interfaces in that they have some static and some changeable text. Both Clark County and Florida have search capabilities on their Web sites. Neither appears to restrict searches to the self-help center, returning results from other subjects on the Web site. Key word searches or fully-enabled full-text searches may be options, but the latter requires considerable more computational power and indexing to perform.

Both the Florida and Clark County sites provide forms as download files to the user's PC, and the Florida site allows forms to be filled in on-line as well. When the users choose the PDF form files (they have three file format choices) they can save the files locally after they are filled in on-line for modification or printing later.

OSCA's current forms format (Amgraf) requires that the user download an application before being able to open and use the form. While it only takes a few moments to do this on a LAN, it can take twenty minutes or more to do it with a dial-up internet connection. Currently, OSCA has approximately 40 public forms in this electronic format.

The interactivity level at the Web site would be relatively low, with users primarily downloading, viewing, and printing static text, forms, and instructions. A full-text search capability is desired for the static text pages of the site. Having the Web site available for approximately 20 hours-a-day, seven days-a-week is acceptable, with the down-time being used for backup and maintenance activities. A person dedicated to the creation of the content, maintenance and editing of the site is desired. Depending on the level of effort needed, this may take more than one person initially and perhaps on an on-going basis. These responsibilities include determining and/or developing the appropriate content for the site, evaluating and including appropriate family law related legislative and procedural changes as they occur, maintaining and updating the links to local court Web sites and other self-help resources, and responding to user needs for better or different content or services.

Anticipated Cost Involved in Implementation

A reliable estimate of the cost to develop a state-wide self-help Web site is not currently available. Significantly more information is needed in order to produce reasonably reliable cost and time estimates. Issues to consider, all of which have cost implications, include the following:

- How many Web pages of static text would need to be produced, formatted and linked (development labor, maintenance and server sizing);
- How many forms would be offered on the Web site, including if they are to be offered by download only or live on the site (development labor, maintenance and server sizing);
- How many administrative users would have access to the Web site's content for updating and editing (security and training);
- Estimated traffic for downloads and estimated simple-click hits per day (server and connection sizing);
- Identification of OSCA, Supreme Court or contractor staff specifically responsible for content accuracy, appropriateness, editing, and maintenance (development labor and maintenance)
- Analysis of forms format to determine if a format change for interactive Web usage is desired. This could result in significant conversion cost, but could also result in significantly increased forms usability.

Additional factors affecting potential costs, that cannot be calculated at this time include:

- Labor hours and per hour cost to develop site design, layout, underlying application development/implementation, search engine configuration, server build and configuration, backup build and configuration, Web site security;
- Labor hours and per hour cost to select, author, edit, and create the text content of the main site pages and underlying subject matter content pages, procedures, and forms instructions;
- Servers and related hardware and software (dependant upon the size and volume of transactions of the Web site) procurement and installation;
- Server, hardware, and software maintenance and support costs, plus contractual and/or staff resources;
- The number of static and dynamic text Web pages to be developed and maintained;
- The complexity of internal and external linking between pages and subjects and external Web sites;
- The complexity, robustness and speed of the search engine and the number of full-text pages to be included in search parameters;
- The amount of training, if any, to be provided to the courts, public, and attorneys and the cost of developing and providing it;
- Maintenance and support labor and resources, contractual, staff, or other persons as well as vendor contracts for support.

The factors identified above do not include the cost and labor of conversion to a foreign language and the resultant doubling of volume of the Web site's pages. If multiple language versions are to be provided, the cost to develop and maintain the self-help site will increase.

The development of a Web site described generically above is technically feasible. OSCA currently uses the technology necessary to undertake this project, but additional licenses, training, computers/servers or resources will likely be necessary to implement such a Web site.

In addition, OSCA staff resources are currently completely committed to existing programs and projects. Therefore, the development of this site, especially if it required OSCA Information Technology staff, would involve the re-prioritization of current projects and programs unless funding for additional staff is provided.

Recommendation # 5

A pamphlet or brochure should be developed and made available for distribution in each circuit court describing the resources available to educate and inform the pro se litigant of the risks and responsibilities of proceeding without professional legal representation.

Implementation Responsibility - Court, Bar or Both?

The Court (OSCA) should develop a brochure containing generic information about litigating pro se. This would be information applicable in all circuits, with space available in the brochure for each circuit to include local information. Such brochures would provide court clerks with an expedient means to address general questions. This printed resource should be widely available in all Missouri courthouses and clerk of court offices throughout the state. Production coordination at the state level will ensure that core content elements are standardized and distribution of the final product is comprehensive.

Actions and Resources Needed to Implement the Recommendation

A small group of judges and court staff members should be designated to develop and approve the content of this self help brochure. Consideration may be given to the following suggestions for content:

Proposed Core Content

- The Distinction between Providing Information and Giving Legal Advice
- The Rights and Responsibilities of Self Representation
- Mandatory Education for Pro Se Litigants
- Resources for Obtaining Information

- Standardized forms and instructions
- Centralized clearinghouse for statewide pro se services and programs
- Resources for Obtaining a Lawyer

In addition to these core elements, each local circuit should have the option of including court-specific information in the brochure that may be helpful to a self-represented litigant. Once published, this brochure should be prominently displayed in the offices of all circuit clerks in Missouri. Court staff should become familiar with the content of this brochure and should be encouraged to provide it to pro se litigants who seek help from the circuit clerk. This awareness training for court staff could be added to an existing deputy clerk training program.

Anticipated Cost Involved in Implementation

Production cost for a high quality three color printed brochure may be in the range of \$1000 - \$1200 for a first run of 10,000 copies, including the cost of the initial set up. Subsequent costs for additional copies of the brochure are expected to be low, and quantity discounts for high volume production should be very reasonable. If these production and printing tasks are contracted to The Missouri Bar's print shop, costs could be lower.

Recommendation # 6

The Circuit and Family Courts should strengthen alliances with state and local bar associations throughout Missouri to encourage, promote, and support lawyer referral programs that will link those in need of legal representation to lawyers who are available to provide some services in family law cases at reasonable or reduced fees.

Implementation Responsibility - Court, Bar or Both?

Joint responsibility of the courts and bar associations, including local and specialty bars.

Actions and Resources Needed to Implement Recommendation

The initial Joint Commission on Pro Se Litigation came to the conclusion that simply providing "how to" information to help pro se litigants navigate the court system in Family Law matters is not necessarily the same as providing meaningful access. Due to the complexity often associated with family law matters, litigants may learn to fill out the forms and attain an action sought, but the results could often carry dire future consequences.

Consequently, litigant education, recommended by the Commission and by this committee in a separate section of this report, would include significant emphasis on making the self-represented aware of the rights and responsibilities and possible negative consequences that could result from proceeding without the advice of a lawyer.

However, this committee concluded that efforts to encourage pro se litigants to seek legal advice also requires that the court and bar associations develop programs addressing the key reason most pro se litigants cite for not using a lawyer – the lack of affordable legal representation services.

Action should be taken by bar associations to expand existing lawyer referral services to better address the needs of low income litigants, including developing methods for (1) identifying lawyers who would be willing to provide reduced rate services as an alternative for low-income pro se litigants and (2) linking these lawyers with pro se litigants who need legal assistance. As this report is being prepared, The Missouri Bar Committee on the Delivery of Legal Services is taking action in this area by initiating a “modest means” effort.

Action should be taken to educate judges and court personnel about resources available at the lawyer referral services, especially clarifying what type of client these programs are intended to serve – clients who can pay for legal services, whether at the ordinary or a discounted rate, as opposed to clients who require pro bono legal assistance.

Action should be taken to explore initiatives for individual circuit courts to develop their own listing of lawyers who would accept cases at a lower rate and authorize the publication of their discounted fees in a publication or database accessible at the court.

Parallel action would be needed to address and solve potential court endorsement issues related to an accessible court publication or database as outlined above.

Action should be taken to assist lawyers in being able to overcome potential malpractice and/or ethical obstacles when offering unbundled services. The unbundled service option is often cited as a way to provide more affordable representation for low-income Missourians. Additional action would be needed by the courts and bar associations at the policy level regarding risks of endorsement in developing unbundled options.

Anticipated Cost Involved in Implementation

The committee concluded that implementation of these efforts could use existing resources. The resources could include dissemination of information through a pro se curriculum at the Judicial and Court Clerk Colleges, dissemination of information through bar communications vehicles, and education through bar CLE programming, all at minimal cost.

In addition, these efforts related to this recommendation could be incorporated into other new resources that may be approved and implemented as part of recommendations in this report. This would include the delivery of training and information to judges and clerks through print, Internet, CD-ROM and video technologies and a Web-site clearinghouse. If new training materials were developed (print, Internet, video, Web site clearinghouse, etc.), additional funding would be required through allocation from the current or future judicial appropriation or other grant funding sources.

Recommendation # 7

The court system and organized bar should proactively encourage lawyers within the state to offer pro bono services annually and encourage initiatives to provide more sources of pro bono legal assistance.

Implementation Responsibility - Court, Bar or Both?

Joint responsibility of the courts and bar associations, with the primary emphasis on efforts by the bar associations.

Actions and Resources Needed to Implement Recommendation

The Missouri Bar has a longstanding record of encouraging lawyers to provide pro bono services and encouraging initiatives to provide more sources of pro bono legal assistance. The Missouri Bar supports an annual effort to recruit lawyers as volunteer attorneys at Legal Aid offices. The Bar has been at the forefront in developing and supporting new funding initiatives for Legal Services offices within Missouri. Attention is drawn to those performing pro bono services through Bar publicity and awards, and the Bar consistently organizes and supports special projects, such as pro bono projects for military personnel and in response to natural disasters. Recently, a new effort was initiated to remove obstacles preventing corporate lawyers from providing pro bono work, and the Bar has provided support for nonprofit efforts to offer legal help to the poor. Nonetheless, many of those in need are still unable to get legal assistance.

As a result the Pro Se Feasibility Committee concluded that the following actions should be initiated or continued to implement this recommendation.

All current efforts and support of pro bono services should continue.

Action should be taken to review and develop better ways to link those in need of pro bono services with attorneys willing to provide the services. Currently, no list exists which contains the names of lawyers who are willing to take pro bono cases, with the exception of the list of lawyers who have volunteered services to handle Legal Aid cases. However, this list is reserved for clients meeting Legal Aid requirements regarding income and threatening circumstances.

Action should be taken to identify, review and develop efforts to remove obstacles facing attorneys who would be interested in providing pro bono work. Recently, The Missouri Bar has initiated a new effort in this area, related specifically to the obstacles facing the corporate lawyer.

Action should be taken when possible to develop legislation to remove impediments to lawyer pro bono services and provide a watchdog function to oppose any proposed legislation that could negatively impact the ability of lawyers to provide free legal services. An example would be the recent effort initiated through the Samaritan Center to remove the risk of malpractice for lawyers performing pro bono services.

Action should be taken to utilize Bar communication vehicles to promote and recognize pro bono efforts within the legal profession.

Action should be taken to encourage law school efforts to provide pro bono services.

Action should be taken to establish a methodology to continually explore new vehicles to provide pro bono services, including the consideration of incorporating some CLE programming focused on the area.

Anticipated Cost Involved in Implementation

For the most part, this recommendation can be implemented at minimal cost, using current resources of The Missouri Bar. These resources include the work of the Delivery of Legal Services Committee, and other committees, the legislative development staff, communication vehicles in place and other staff resources.

Recommendation # 8

The Supreme Court of Missouri should develop and approve plain language, standardized forms and instructions that are accepted in all state courts and made available to pro se litigants.

Implementation Responsibility - Court, Bar or Both?

The primary responsibility to implement this recommendation is with the Court. The Court will need to adopt a rule for reviewing such forms. However, the committee concluded that the bar (attorneys) should be involved in the design, development and testing of forms in order that the system can benefit from the expertise of those who practice in the Family Law area on a regular basis (see action/resources needed below).

Actions and Resources Needed to Implement Recommendation

For the development of plain language, standardized forms and instructions that will be accepted in all Missouri state courts for use by pro se litigants, the Pro Se Feasibility Committee concluded that an implementation committee will need to take action and address resources in a five-step sequence.

Step 1 - Design Team Development

Action must be taken to assemble a design team that, at minimum, includes family court judges, attorneys and court staff. The committee also recommends that consideration be given to including additional members with expertise in other disciplines, which could be helpful in the development of forms targeted for use by non-lawyers. These other members would have expertise in areas such as graphic design, computer use, psychology and human behavior.

Resources for the legal expertise component (judges, attorneys, and court staff) could be identified and appointed by the court and bar. Resources from the other disciplines would likely require a funding source to pay for this expertise. Consequently, an implementation

committee would need to identify and secure funding through appropriations in the judiciary's budget or possibly pursue grants from outside organizations. Another alternative to secure expertise from those outside the legal community may be to pursue the cooperation and involvement of universities in Missouri for minimal or no cost.

Step 2 - Form Creation

Action must be taken to create the forms that not only take into account all applicable law, but just as importantly, ensure that the forms are easily understood by the pro se litigant using them. This would include review of forms currently used in Missouri and other states. The committee also cautions the implementation committee about the danger in trying to simplify the complexity associated with Family Law issues so much that a pro se litigant would not be aware of or understand potential future consequences associated with a ruling, resulting from the use of a form. Since many pro se litigants will not have the benefit of advice from a lawyer, the committee recommends one imperfect, but possible solution, would be including warnings regarding consequences of action being taken with the use of a form. These warnings should be uniformly and consistently placed in every pro se form created and approved for use in the state. The warnings would advise pro se litigants to explore resources to obtain legal advice if they are uncertain or do not understand the potential consequences outlined.

Resources needed to address the applicable law and review the forms currently in use within Missouri and other states should be an important consideration when selecting members of the design committee.

An alternative action would be to streamline the form creation phase by utilizing pro se litigant forms that already exist and are in use within Missouri courts and/or the courts of other states. This process, while not favored as a long term solution by the committee, may allow for a rapid and efficient, although less perfect, approach to get forms into the Missouri court process more expediently until better forms can be created.

Step 3 - Testing

Since these forms are intended for use by individuals who are not trained in the law and because of the differences in population and court procedures from one circuit to the next, the committee concluded that implementation actions should include a testing phase. St. Louis County, which utilizes standardized forms for pro se litigants, offers an example of the value of regular testing. This circuit has frequently revised its forms based on user needs expressed by both judges and litigants.

The committee concluded that it is critically important to obtain feedback from judges during the testing phase. Implementation action should include a method to obtain actual feedback from judges in a range of circuits, which have significant Family Law pro se filings. One action which may be helpful in obtaining actionable feedback would be to recruit one judge to handle all pro se cases in the testing circuit. In addition, actual litigant

feedback could be acquired by requiring the completion of a survey at the conclusion of the case.

Resources needed to address the testing phase would include the expertise to develop a survey for the judges and litigants, which would capture information needed. This expertise could possibly be incorporated into the design committee or another similarly appointed/recruited committee involving judges, attorneys and others. Court staff resources would be needed to administer, collect, and return the testing vehicles for analysis.

Step 4 - Supreme Court of Missouri Approval and Dissemination of Forms

Since the forms used in circuit courts vary throughout the state, the committee, and the initial Pro Se Commission, concluded that it will be essential for the Supreme Court of Missouri to approve the plain language, standardized forms and instructions developed in this process and to order that these forms be accepted in all circuit courts in the state. The latter action would require a rule change as one of the implementation actions.

The implementation committee would require the support of the Supreme Court of Missouri for this phase of the recommendation.

Step 5 - Ongoing Review Process and Schedule

As laws change and evolve, a simple mechanism should exist for the review and revision of the standardized forms developed for use by the pro se litigant. The committee recommends that a review schedule and review committee be established, which would meet regularly or at least at the end of each legislative session.

Anticipated Cost Involved in Implementation

Form Creation and Development

Some expense would be involved in the implementation (creating, disseminating forms) including the time involved by the individuals that will create and test the forms. If appointed committees are used, this would include meeting costs, such as travel, telephone, meals, etc. Meeting space would be available at no cost, using existing OSCA facilities. This cost would depend on the number of meetings required, the number of committee members appointed, and the type of meeting utilized. Should the implementation phase include outside disciplines in the creation phase, additional costs could be incurred.

As mentioned above, another option that may reduce costs would be to consider using forms that already exist and are in use in Missouri and/or other states, rather than developing completely original forms.

Form Dissemination - Electronic and Printed Versions

Electronic resources and software to create and deploy the forms is already available. In fact, forms are already being made available on numerous judicial Web sites. The cost for electronic dissemination would be in the purchase and/or use of forms software.

Conversely, dissemination of the forms in a paper format could be costly. Although the cost of each form might not be significant, the combined cost of all the forms disseminated on a statewide basis could be expensive. While the use of the Internet as a dissemination source should be encouraged, all members of the committee agreed that “low tech” solutions must also be available. This means the actual dissemination of paper forms. Once again, this cost will depend on a number of variables that are not known at this point in the process, so a specific cost estimate is not likely to be useful.

The committee recommends that the implementation committee explore creative methods to disseminate forms at low cost; or perhaps some form of partnership could be forged with attorneys to provide free paper forms.

Appendix A

Model Curriculum for Litigant Education Program:

1. Risks and Responsibilities

- a. Self-assessment exercise
- b. Cost in money, time and self-directed effort
- c. Binding nature of outcomes
- d. De mystifying unrealistic expectations

2. Legal Information

- a. Overview of the litigation process (awareness)
 - i. Filing requirements and fees
 - ii. Local court rules of practice and procedure
 - iii. Pleading requirements
 - iv. Service of process
 - v. Discovery and pretrial motion procedures
 - vi. Trial and evidence presentation
 - vii. Enforcement of judgments
 - vii. Appeals
- b. Protocols and standards of conduct
 - ix. Courthouse access and courtroom decorum
 - x. Limitations on judicial/clerical assistance
 - xi. Ex parte communications

3. Legal Resources

- a. Internet legal help sites
- b. Court-approved forms
- c. Legal clinics
- d. Legal Aid
- e. Missouri Bar pro bono/referrals

Presentation and Delivery Alternatives:

Imparting information to self-represented litigants can be accomplished in a variety of ways, but the mandatory element of the training proposed here requires that there be a method for the court to verify compliance. Recognize also that compliance and learning do not necessarily occur together. Any mandatory training policy should, therefore, avoid being overly burdensome for the average person to fulfill and should create a real opportunity for the self-represented litigant to learn (as compared to a requirement that is satisfied by mere technical compliance).

1. Live Classroom Presentation

Advantages: interactive, content customizable to audience needs.

Disadvantages: dependant on court staff or volunteer presenters, limited presentation schedule; scheduling task may burden court staff; participants may be required to miss work in order to attend program offered only during business hours of the court.

2. Video Recorded Presentation

Advantages: low presentation cost, available on demand, standardized content.

Disadvantages: high production cost, static and passive, costly to update; material can become outdated rather quickly.

3. Self-study Guidebook

Advantages: low cost, easy to update, standardized content, students can retain the written material for future reference.

Disadvantages: passive, difficult to monitor compliance, content not customizable.

4. Interactive Internet-based Instruction

Advantages: low cost, easy to update and revise, limitless access opportunities with any web- connected PC, multimedia capabilities (text, video and audio).

Disadvantages: requires user technical ability, compliance monitoring issues.

Operational Considerations:

1. Is the training requirement mandatory only after filing but before a hearing?

Prefiling attendance by litigants interested in self-representation should be encouraged. Those who are informed of requirements for self-representation before filing will be better prepared to follow procedures, or may decide that self-representation is not right for them. If a self-represented litigant files a case before being trained, the training requirement must be satisfied before the matter will be allowed to progress (except in emergency circumstances). The Vermont example is instructive. Vermont state courts have implemented a mandatory pro se litigant education program for family court cases involving divorce, parentage or child custody. The training is not required in abuse or child support proceedings. The court issues an order requiring attendance when a new case is filed and before a hearing, and provides a choice of dates to attend the classroom training. The education requirement applies to both plaintiffs and defendants, and is offered free of charge by volunteer attorneys in each county.

2. How does the mandatory nature of the requirement apply to defendants or respondents?

Every party seeking relief from the court should be required to attend if he or she intends to proceed without legal counsel. An opposing party's failure or refusal to attend will not preclude the court from proceeding, but may be grounds for the court to deny relief to any pro se party who has not fulfilled the training requirement. Only parties entering appearances on their own behalf in a case are subject to the training requirement.

3. What is the indication in the official record that the training requirement has been satisfied by the parties?

At the conclusion of a classroom-style training session, certificates of completion can be issued by the instructor to each participant who then files it in the record of the case. Those pro se litigants who are trained before filing a complaint may file the training certificate with the initial pleadings. A court clerk or judge reviewing a docket sheet or a file involving a pro se party would know whether the training requirement has been satisfied. Proof of compliance is more problematic when training is delivered by any of the other suggested methods.

4. Must parties repeat the training with each new case filed? For post judgment actions?

Repeat attendance would depend on numerous factors, such as the time interval between

law suits, the relationship of the subsequent law suit to the original, and availability of court resources to provide repeat training. Enforcement of judgment actions normally would not require the party to repeat the training.

5. Are exceptions made for emergency proceedings? For out-of-town parties?

The training should not be mandatory in adult abuse, child protection or other actions requiring prompt attention by the court in order to protect against physical harm to another person. Additional exceptions may be made by a judge based on the circumstances of a particular pro se litigant. The Vermont court rule provides as follows:

“ Each program should contain appropriate provisions permitting the court to waive any requirement of attendance on a showing by a litigant of a constitutionally protected interest that would be invaded by participation in a particular program, or a personal disability or vulnerability that would render participation onerous or dangerous.”

6. Must the training content be customized to describe local court practices?

Ideally, training for pro se litigants should be customized to describe local court practices. Customization is easier if the education is delivered as a live classroom-style presentation. If the delivery method is video or other static technique, customization of content to include relevant local information will be less convenient and more costly to accomplish.

7. How will volunteer attorneys be recruited and trained to conduct pro se litigant education?

If live classroom training is to be offered, bar associations can be enlisted to help identify lawyers who would be willing to provide the training. Recruitment notices can also be posted in courthouses in rural locations where bar associations may be less active. The training content to be used in each court location will be determined in accordance with statewide policy and the preferences of the judges of the court. Lawyers who provide this service should not be precluded from representing people attending the class, if those individuals freely decide later that self-representation is not appropriate for them.

Appendix B

Many states already have legal advice guidelines that have been established and are being used by court staff. It is important that clerks in the State of Missouri be provided with specific guidelines while assisting pro-se litigants to insure that the correct information is being provided without providing legal assistance.

An article written by Donna Beaudet, Court Administrator in the Forty-sixth District in the State of Michigan, and published in a 1999 article of The Court Manager sets out specific roles and responsibilities of court staff in providing assistance to those court customers seeking legal advice from clerks. Specific guidelines include what court staff can and cannot provide. As set out in the article, they are as listed below:

GUIDELINES FOR CLERKS	
Court Staff Can	Court Staff Cannot

1. Provide legal and procedural definitions	1. Give legal interpretations or procedural advice
2. Cite statutes, court rules and ordinances	2. Conduct legal research
3. Provide public case information	3. Disclose confidential case information
4. Provide general information on court operations	4. Disclose confidential, ex parte, or restricted information on court operations
5. Provide procedural options	5. Give personal opinions
6. Make general referrals	6. Make subjective or biased referrals
7. Provide forms and instructions	7. Complete forms for parties

APPENDIX C

RECOMMENDATION 2				
CLERK SEMINAR ON PRO SE LITIGATION				
<i>Offered on day added to clerk college; mandatory for college attendees</i>				
		Cost	x number	Total Cost
hotel - 1 night		\$ 75.00	80	6,000
supper		\$ 20.00	80	1,600
breaks		\$ 8.00	90	720
Group lunch		\$ 16.00	90	1,440
Group breakfast		\$ 13.00	80	1,040
screen		\$ 50.00	1	50
national speaker, fee & travel		\$ 2,000.00	1	2,000
in-state speakers, expenses		\$ 132.00	2	264
TOTAL				13,114
TOTAL FOR 2 COLLEGES				26,228

WEB EX SEMINAR				
Web Ex Seminar	Clerk Focus	100 Clerks for 1.5 hours	Contractual	\$2,940

BROCHURE DEVELOPMENT FOR LITIGANTS				
Supplies for printing brochures	15,000 brochures @ .13 cents each for pa	Supplies		\$1,950
Supplies for printing posters	800 17" x 11" Posters @ .79 each	Supplies		\$632
Postage for brochures/posters	Send to 115 counties @ \$6 per county	Postage		\$843
Language translation	40 hours @ \$75 per hour	Contractual		\$3,000

VIDEO BASED TRAINING FOR LITIGANTS & CLERKS				
Video Production	Litigants (Streaming)	Contractual		\$5,000
Video Production	Clerks (LAN/CD ROM)	Contractual		\$5,000

RECOMMENDATION 3				
JUDGE SEMINAR ON PRO SE LITIGATION				
<i>Offered on day added to judicial college</i>				
		Cost	x number	Total Cost
hotel - 1 night		\$ 98.00	50	4,900
supper		\$ 20.00	50	1,000
breaks		\$ 9.00	50	450
Group lunch		\$ 16.00	55	880
Group breakfast		\$ 13.00	50	650
screen		\$ 50.00	1	50
national speaker, fee & travel		\$ 2,000.00	1	2,000
in-state speakers, expenses		\$ 156.00	2	312
TOTAL PER COLLEGE SESSION				10,242
TOTAL FOR 2 COLLEGES				20,484

WEB EX SEMINAR				
Web Ex Seminar	Judge Focus	100 Judges for 1.5 hours	Contractual	\$2,940

VIDEO BASED TRAINING FOR JUDGES				
Video Production		Judges (LAN/CD ROM delivery)	Contractual	\$5,000